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9 **UNITED STATES DISTRICT COURT**

10

11 **DISTRICT OF OREGON**

12

13 **EUGENE DIVISION**

14 TAMARA HARRIS,

15 **Case No.**

16 Plaintiff,

17 v.

18 **PLAINTIFF'S COMPLAINT FOR**
19 **DAMAGES AND DEMAND FOR JURY**
20 **TRIAL**
21 **(Unlawful Debt Collection Practices)**

22 CAPITAL ONE BANK (USA), N.A.,

23 Defendant.

24

25 **COMPLAINT**

26 TAMARA HARRIS ("Plaintiff"), by her attorney, alleges the following against
27 CAPITAL ONE BANK (USA), N.A. ("Defendant"):

- 28 1. Plaintiff brings this action on behalf of herself individually seeking damages and any other
29 available legal or equitable remedies resulting from the illegal actions of Defendant, in
30 negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular
31 telephone in violation of the Telephone Consumer Protection Act (hereinafter "TCPA"),
32 *47 U.S.C. § 227 et seq.*

33

34 **JURISDICTION AND VENUE**

- 1 2. Defendant conducts business in the state of Oregon, and therefore, personal jurisdiction is
2 established.
- 3 3. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47 U.S.C. §227(b)(3). See,
4 *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740 (2012), holding that federal and
5 state courts have concurrent jurisdiction over private suits arising under the TCPA.
- 6 4. Venue is proper in the United States District Court for the District of Oregon pursuant to
7 28 U.S.C § 1391(b) because Plaintiff resides within this District and a substantial part of
8 the events or omissions giving rise to the herein claims occurred, or a substantial part of
9 property that is the subject of the action is situated within this District.

10 **PARTIES**

- 11 5. Plaintiff is a natural person residing in the county of Lane in the city of Eugene, Oregon
12 and is otherwise *sui juris*.
- 13 6. Defendant is a Virginia corporation doing business in the State of Oregon, with its
14 principal place of business located in McLean, Virginia.
- 15 7. At all times relevant to this Complaint, Defendant has acted through its agents, employees,
16 officers, members, directors, heir, successors, assigns, principals, trustees, sureties,
17 subrogees, representatives and insurers.

19 **FACTUAL ALLEGATIONS**

- 20 8. Defendant is a “person” as defined by 47 U.S.C. § 153 (39).
- 21 9. Defendant placed collection calls to Plaintiff seeking and attempting to collect on alleged
22 debts owed by Plaintiff.
- 23 10. Defendant placed collection calls to Plaintiff’s cellular telephone at phone number (541)
24 968-77XX.

11. Defendant places collection calls to Plaintiff from phone numbers including, but not
1 limited to, (800) 955-6600.
12. Per its prior business practices, Defendant's calls were placed with an automated telephone
3 dialing system ("auto-dialer").
13. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a)
5 (1) to place its telephone calls to Plaintiff seeking to collect a consumer debt allegedly
7 owed by Plaintiff, TAMARA HARRIS.
14. Defendant's calls constituted calls that were not for emergency purposes as defined by 47
9 U.S.C. § 227(b)(1)(A).
15. Defendant's calls were placed to a telephone number assigned to a cellular telephone
11 service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. §
12 227(b)(1).
16. Defendant never received Plaintiff's "prior express consent" to receive calls using an
14 automatic telephone dialing system or an artificial or prerecorded voice on her cellular
15 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).
17. On February 13, 2018, at or around 3:56 p. m. Pacific Standard Time, Plaintiff spoke with
18 Defendant's male representative at phone number (800) 955-6600 and requested that
19 Defendant cease calling Plaintiff's cellular phone.
20. During the conversation, Plaintiff gave Defendant her name, social security number, date
21 of birth, and zip code to assist Defendant in accessing her account before asking Defendant
22 to stop calling her cell phone regarding all her accounts.

1 19. Plaintiff revoked any consent, explicit, implied, or otherwise, to call her cellular telephone
2 and/or to receive Defendant's calls using an automatic telephone dialing system in her
3 conversation with Defendant's representative on February 13, 2018.

4 20. Despite Plaintiff's request to cease, Defendant continued to place collection calls to
5 Plaintiff through July 25, 2018.

6 21. Despite Plaintiff's request that Defendant cease placing automated collection calls,
7 Defendant placed at least One hundred and thirty-nine (139) automated calls to Plaintiff's
8 cell phone.

9 **FIRST CAUSE OF ACTION**

10 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

11 **47 U.S.C. § 227**

12 22. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
13 forth above at Paragraphs 1-21.

14 23. The foregoing acts and omissions of Defendant constitute numerous and multiple
15 negligent violations of the TCPA, including but not limited to each and every one of the
16 above cited provisions of 47 U.S.C. § 227 et seq.

17 24. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff is
18 entitled to an award of \$500.00 in statutory damages, for each and every violation,
19 pursuant to 47 U.S.C. §227(b)(3)(B).

20 25. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

22 **SECOND CAUSE OF ACTION**

23 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**

24 **PROTECTION ACT**

25 **47 U.S.C. § 227 et. seq.**

- 1 26. Plaintiff repeats and incorporates by reference into this cause of action the allegations set
2 forth above at Paragraphs 1-21.
- 3 27. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing
4 and/or willful violations of the TCPA, including but not limited to each and every one of
5 the above cited provisions of 47 U.S.C. § 227 et seq.
- 6 28. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq.,
7 Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every
8 violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- 9 29. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, TAMARA HARRIS, respectfully requests judgment be entered
13 against Defendant, CHASE BANK (USA), N.A., for the following:

14 **FIRST CAUSE OF ACTION**

- 15 30. For statutory damages of \$500.00 multiplied by the number of TCPA violations alleged
16 herein (139), \$69,500.00;
17 31. Actual damages and compensatory damages according to proof at time of trial;

18 **SECOND CAUSE OF ACTION**

- 19 32. For statutory damages \$1,500.00 multiplied by the number of TCPA violations alleged
20 herein (139), \$208,500.00;
21 33. Actual damages and compensatory damages according to proof at time of trial;

22 **ON ALL CAUSES OF ACTION**

- 23 34. Litigation Costs and reasonable attorneys' fees;
24 35. Any other relief that this Honorable Court deems appropriate.

25 **JURY TRIAL DEMAND**

1 36. Plaintiff demands a jury trial on all issues so triable.
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2 RESPECTFULLY SUBMITTED,
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3 Dated: November 30, 2018
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4 */s/ James A. Sellers*
5 James A. Sellers, #184404
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